

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION**

SEAN D. RIES, JOHN R. MURRAY,
PHILIP C. HENRY, and others similarly
situated,

Plaintiffs,

v.

ALLAMERICA FINANCIAL
CORPORATION, ALLAMERICA
FINANCIAL LIFE INSURANCE AND
ANNUITY COMPANY, and
FREDERICK H. EPPINGER, JR.,

Defendants.

Civil Action No. 4:04-cv-40179(FDS)

ORAL ARGUMENT REQUESTED

DEFENDANTS' MOTION TO DISMISS

Pursuant to Federal Rule of Civil Procedure 12(b)(6), defendants Allmerica Financial Corporation, Allmerica Financial Life Insurance and Annuity Company, and Frederick H. Eppinger, Jr. hereby move to dismiss plaintiffs' Class Action Complaint ("Complaint").

The grounds for this Motion are set forth in Defendants' Memorandum of Law, filed herewith.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(D), the defendants hereby request that the Court grant a hearing on their Motion to Dismiss. In support of this request, the defendants believe that oral argument will assist the Court in clarifying and evaluating the issues raised in the Motion.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(A)(2)

Counsel for the defendants certifies that he has attempted in good faith to resolve or narrow the issues raised in this Motion, but has been unable to do so.

WHEREFORE, defendants respectfully request that the Court:

- i. Dismiss the Complaint, in its entirety, with prejudice and without leave to amend;
- ii. Enter Judgment for defendants and against plaintiffs; and
- iii. Grant such further relief as is just and proper.

Respectfully submitted,

ALLMERICA FINANCIAL CORPORATION,
ALLMERICA FINANCIAL LIFE INSURANCE
AND ANNUITY CO., and FREDERICK H.
EPPINGER, JR.

By their attorneys,

/s/ Brett R. Budzinski

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Dated: November 5, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served on this 5th day of November, 2004 by overnight mail upon the following counsel of record:

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